

Water Pollution Control Advisory Council (WPCAC) Meeting  
November 7, 2002 9:30 a.m.-11:00 a.m.  
Room 244 Metcalf Building

**Attendees:**

Council Members:

Richard Parks, Fishing Outfitters Association of MT  
Don Halverson, United Association of Plumbers &  
Pipefitters  
Roger Noble, Land and Water Consultants  
Barb Butler, Billings Solid Waste Division  
Jack Stults, Dept. of Natural Resources &  
Conservation (DNRC)  
Robert Willems, Soil & Water Conservation District  
John L. Wilson, Montana Trout Unlimited

Other Attendees

Bob Bukantis, Department of  
Environmental Quality (DEQ)  
Chris Levine, DEQ  
Abe Horpestad, DEQ  
Bonnie Lovelace, DEQ  
Dona McClung, DEQ  
John Arrigo, DEQ  
Claudia Massman, DEQ  
Don Allen, Allen & Associates

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Approval of Minutes

Chairman Richard Parks called the WPCAC meeting to order at 9:30 a.m. A briefing on enforcement budget status, an update of pending action to modify the water quality standard for total trihalomethane and scheduling the next meeting was added to the agenda. The council approved the minutes from the August 22, 2002 meeting.

Missouri River Enforcement Issue

Bonnie Lovelace said the violation on the Missouri River is on the Dana Ranch between Helena and Great Falls. The ranch personnel placed debris along the bank to stabilize the eroding bank. The debris had rebar and other metals in it that is inappropriate for use in stabilizing banks. DEQ notified the ranch of the violation through the bureau process. DEQ began a process of working with the parties involved to determine the best way of resolving the problem. They have removed a lot of the material that was in the water or was likely to be moved during high water events but the debris is still there. They are completing a survey and putting a final plan together to remove all the debris and have proper bank stabilization in place before next spring's high water event. This project will restore the bank for approximately two thousand feet. The ranch is also moving the corrals much farther away from the river as part of this plan. DEQ would prefer to continue working with this issue as compliance assistance rather than as a formal enforcement action that would require penalties.

John Wilson said that the concerns he had with this issue was that the violation occurred over two years ago with no signs of rehabilitation or remediation. How is the rehabilitation being funded?

Bonnie Lovelace said that DEQ initially wanted to have the process go faster but there was an opportunity to fix the eroding bank at the same time as the cleanup. The

ranch is putting up some money for rehabilitation and the conservation district is also seeking additional funding to finish the project.

#### Enforcement Budget Status

John Arrigo said that this is a briefing to indicate how the budget cuts have impacted enforcement. Funding from various programs and from General Fund is combined together into a pot of money that is spent according to a percentage to allow the money to be spent at an even rate. Enforcement work is not directly tied to specific funding sources. One computer FTE was moved into a centralized Information Technology Bureau and 2.5 FTE attorney positions were put into an attorney pool taking funding for these positions with them. The budget has gone up this year due to an additional \$34,610 of unspent general fund from last year and an additional \$74,546 of EPA grant money (PPG money). The general fund appropriations table included in the packet mailed to the council shows the budget cuts. All of the budget cuts have come out of operating expenses. The response to complaints and some cases have slowed due to the budget cuts but the workload has remained steady. A list of water quality cases is included in the packet mailed to the council members. Additional money is being requested at the upcoming legislative session for a leased vehicle and to continue and complete the data base upgrade. The request for the biennium is similar to the funding for the FY 03.

John Wilson asked what is the case status for the Yellowstone Development LLC?

John Arrigo said the Yellowstone Development LLC is an ongoing case and nothing has yet been filed. DEQ is looking at violations that are more than two years old. The statute of limitations would cause DEQ to lose the ability to assess a penalty for those violations. DEQ has entered into a tolling agreement with Yellowstone Mountain Club where they have agreed to stop the clock for six months and allow DEQ to penalize them for those violations that are more than two years old. DEQ will begin finalizing the violations, calculate a penalty and start settlement negotiations. The violations are related to placing a waste and discharging without a permit and violating a storm water permit on multiple days at multiple sites.

Richard Parks asked how is Enforcement going come out in the legislative session?

John Arrigo said that it is impossible to tell what the legislature might do. The Enforcement Divisions goal at the next legislature is to remain intact and maintain what we currently have. Enforcement is not asking for extra funding other than vehicle and data base money. If there is not enough money, a position can be held vacant without slowing down Enforcement's work.

#### DEQ Legislative Requests to Modify the Montana Water Quality Act

Bob Bukantis said that DEQ has found that the 10-year deadline for getting TMDLs completed on the revised 303(d) list is overly ambitious. DEQ is seeking relief

by asking the legislature for an extension of the deadline for completion of those TMDLs for an additional 5 years to 2012.

John Wilson asked how this aligns with the judicial decree on TMDLs? Does the judicial decree say the TMDLs must be done by a certain date or that no new discharge permits can be issued until the TMDLs are completed?

Bob Bukantis said that the judge's decree is not in alignment with the 2012 deadline. The legislature is not bound by the court order and can grant the 2012 deadline but DEQ will still be bound by the court order and the 2007 deadline. The judge's order also states that all necessary TMDLs must be completed to issue any relevant permits. The permit issue is not being changed in this proposed modification.

Claudia Massman said that the reason DEQ is going to the legislation at this time is that the judge's decision is being appealed to the ninth circuit. Judge Molloy's decision may be reversed. At that time the state would not be bound by the court order and could follow the deadline that was enacted in statute.

Bonnie Lovelace said that DEQ originally started to put two changes into one bill but has decided to separate them into two different bills. The first bill will be the TMDL change and the second will address the appeal process. The department had been notified by EPA that DEQ is not as effective as EPA in the statute language that addresses the appeal process. DEQ is proposing a change in the appeal language in statute 75-5-403. This addresses who can appeal a permit in a denial status, modification, or an issuance. The change will broaden who can appeal an issuance of a permit by allowing other than the applicant or permit holder to do so. The statute currently allows only the applicant or permit holder to appeal a denial or a modification. The proposed changes will allow the applicant or permit holder to appeal conditions of the permit at its issuance. Interested parties will have the ability to appeal the permit issuance and modification but must meet the definition of an interested party and define what they are appealing. The interested party must also have been involved in the process when it went out for public notification.

Bob Bukantis said that DEQ is aware of an interest by the Montana Realtors Association to modify the ORW statute.

Claudia Massman said that the Montana Realtors Association is interested in clarifying the statute. During the first petition for an ORW on the Gallatin River, this group thought the statute was unclear on procedures and definitions. When the Board is determining whether an ORW designation is necessary to protect the outstanding resource water, the department interpreted that to mean convenient versus absolutely necessary. Some groups disagreed with this interpretation.

#### Gallatin River ORW Status

Bob Bukantis said that the Board was approached to list the Gallatin River as an ORW and has accepted the petition. DEQ is looking for funding to do an EIS as part of the next step in the ORW process.

#### DEQ's Position on Montana Adopting the Federal Arsenic Standard

Abe Horpestad said that the federal MCL is effective under the legal interpretation of effective. DEQ plans to go forward with rulemaking and will have a formal rule for the councils review at the next meeting.

#### Status of Rulemaking for Water Quality Standards for EC and SAR for the Tongue River, Powder River, Little Powder River, Rosebud Creek and their Tributaries

Abe Horpestad said that a total of 858 individuals commented on EC and SAR standards. There are approximately 185 distinct comments. Of the 858 individuals commenting, approximately 600 were with the preprinted postcards. In responding to those comments, about 140 have responses generated for them. Some of the comments will need to be split adding 20 or 30 comments and some can be consolidated because the response is the same. A completed set of draft responses that can be mailed out to the board will be finished the week of November 12<sup>th</sup>. DEQ is considering some changes to the draft rule. The current proposal treats EC and SAR as narrative parameters for the purpose of non-degradation. Possible changes may include having a different way of dealing with non-degradation. This will use a percentage of the standard as the significant threshold for EC and SAR. Once EC and SAR reach the percentage authorization to degrade will be required. The percentage will be different for the Tongue and Powder Rivers. The numbers that are being proposed will be slightly increased with the usage of percentages. Art Compton has been discussing various approaches with the representatives from the Northern Plains and Fidelity, which will be linked into the comment process. Irrigators will possibly be unhappy with increase in the numbers or the potential for flow-basing the permits for the discharges. DEQ is evaluating the effect of various permit limits upon the dischargers in terms of if and how many wells they can have. At the December Board meeting, the Board will review the draft responses, discuss the matter to determine if they agree with the responses and then have DEQ make modifications to the responses. DEQ will then redraft the rule and go before the Board in January for a final decision.

#### Update of Pending Action to Modify the Water Quality Standard for Total Trihalomethane

Abe Horpestad said that trihalomethane is formed when effluent containing carbon is chlorinated. There are some on-going ground water clean-up programs that are concerned with trihalomethane. EPA has change the MCL to 80 µg/L, but delayed the effectiveness for some classes of drinking water for a period of time. DEQ plans on going forward with adopting the new MCL number. Trihalomethane is in WQB-7 and any rule citing it will also be updated at the same time.

John Wilson said that the council would not be opposed to changing the numbers for trihalomethane and arsenic to align with federal standards.

Abe Horpestad said that this meeting might be considered as the council's opportunity to comment on the rules. The statute will need to be looked at to see if the actual formal rules need to be presented to the council.

Richard Parks said that since this a simple change to be in compliance with the federal standards it should not be a problem. It may be possible to make a motion to adopt the changes on both arsenic and trihalomethane at this meeting. Legal can be consulted later to verify if this is a valid motion at this time without written formal rules.

John Wilson moved to adopt the recommended water quality standards for trihalomethane and arsenic and the implementation dates as recommended by the department.

The motion was seconded and approved by all members present.

#### Scheduling Next Meeting

The next WPCAC meeting is scheduled for February 6<sup>th</sup>, 2003. An agenda item for that meeting would to select meeting dates for the remainder of the year.

Richard Parks adjourned the meeting at 11:00 a.m.